

amendments to a cooperative agreement which will cover (1) acceptance of a bid on a proposed project contract that does not exceed by more than 20 percent the estimated cost, initially established in the cooperative agreement, of the work covered by the proposed project contract, and (2) the estimated costs of additional work under a project contract, if the estimated cost, initially established in the cooperative agreement, of the work covered by the project contract will not be increased by more than 20 percent.

**§ 881.6 Project contract.**

(a) Upon approval of the project by the Secretary, execution of the cooperative agreement, and receipt of an acceptable bid, the State shall carry out and execute the project through a project contract, or, if the work is to be done in phases, a series of project contracts, entered into by the State and its contractors or suppliers for the construction, installation, services or work to be performed.

(b) Project contracts shall be entered into only with the lowest responsible bidder pursuant to suitable procedures for advertising and competitive bidding. The Government's obligation to contribute to the cost of a project, or a phase of a project, is limited to the estimated costs established in the cooperative agreement. If the bids on work to be done under a proposed project contract exceed the estimated cost of the work established in the cooperative agreement, the State should not enter into the project contract unless the cooperative agreement has been amended to provide for an increase in contributions sufficient to meet the increase in costs, or unless the State wishes to assume the excess cost of the project.

(c) OSM shall be advised of the time and place of the opening of bids on a proposed project contract and may have a representative present.

(d) If the State amends a project contract, or issues a change order thereunder, and the amendment or change order results in an expenditure under the project contract in excess of the estimated cost of the work established in the cooperative agreement, the Government shall be under no obligation to contribute to such excess costs un-

less the cooperative agreement has been amended to provide for an increase in contributions by the parties sufficient to meet such excess costs.

(e) The State shall furnish the Director, in duplicate, a certified true executed copy of each project contract with related plans, specifications, and drawings annexed thereto, promptly upon its execution.

(f) The State shall include in each project contract provisions to the effect that—

(1) Regardless of any agreement between the State and the Government respecting contributions by the Government to the cost of the contract under the provisions of section 205(a)(1) of the Appalachian Regional Development Act of 1965 (Pub. L. 89-4, 79 Stat. 5), the Government shall not be considered to be a party to the contract or in any manner liable thereunder. Neither the Government nor any of its officers, agents, or employees shall be responsible for any loss, expense, damages to property, or injuries to persons, which may arise from or be incident to the use and occupation of any property affected by the operations contemplated under the project, or for damages to the property of the contractor, or for injuries to the person of the contractor, or for damages to the property, or injuries to the contractor's officers, agents, servants, or employees, or others who may be on said premises at their invitation or the invitation of any of them, and the State and the project contractor shall hold the Government and any of its officers, agents, or employees, harmless from all such claims.

(2) The Secretary of the Interior or the Director of OSM or their authorized representative may enter upon and inspect the project at any reasonable time and may confer with the contractor and the State regarding the conduct of project operations.

(3) All laborers and mechanics employed by the contractor or subcontractors on the project shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5). The Secretary of Labor

shall have with respect to such labor standards, the authority and functions set forth in Reorganization Plan Number 14 of 1950 (15 FR 3176, 64 Stat. 1267, 5 U.S.C. 133-133z-15), and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276(c)).

(4) To assure the use of local labor to the maximum extent practicable in the implementation of a project:

(i) Every contractor or subcontractor undertaking to do work on the project which is or reasonably may be done as onsite work, in carrying out such contract work shall give preference to qualified persons who regularly reside in the labor area as designated by the U.S. Department of Labor wherein such project is situated, or the subregion, or the Appalachian counties of the State wherein such project is situated, except:

(A) To the extent that qualified persons regularly residing in the area are not available;

(B) For the reasonable needs of any such contractor or subcontractor, to employ supervisory or specially experienced individuals necessary to assure an efficient execution of the contract;

(C) For the obligation of any such contractor or subcontractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that in no event shall the number of non-resident persons employed under paragraph (f)(4)(i)(C) exceed 20 percent of the total number of employees employed by such contractor and his subcontractors on such project.

(ii) Every such contractor and subcontractor shall furnish the appropriate U.S. Employment Service offices with a list of all positions for which laborers, mechanics, and other employees may be required.

(iii) Every such contractor and subcontractor shall furnish periodic reports to the contracting agency on the extent to which local labor has been used in carrying out the contract work.

#### **§ 881.7 Administration of contributions.**

(a) The Government's contribution to a State will be made only pursuant to a cooperative agreement and only upon the basis of payments made, or that

are then due and payable, by the State under a project contract between the State and its contractor for the construction, installation, services or work performed on individual projects and shall not exceed 75 percent of such amounts.

(b) The State shall submit to the Director, not more often than once a month and for each cooperative agreement, a separate voucher which describes each payment made or that is due and payable by the State under a project contract. The amounts claimed under each voucher shall be certified by the State as proper charges under the project contract, and the State shall also certify that the amounts have either been paid or are due and payable thereunder. Insofar as the Government's contribution payments related to amounts due and payable rather than amounts already paid, the State shall disburse such funds together with the funds contributed by the State, promptly upon receipt from the Government.

(c) The State shall maintain suitable records and accounts of its transactions with and payments to project contractors, and the Government may inspect and audit such accounts and records during normal business hours and as it may deem necessary.

#### **§ 881.8 Withholding of payments.**

Whenever the Secretary, after reasonable notice and opportunity for hearing, finds that there is a failure by the State to expend funds in accordance with the terms and conditions governing the Government's contribution for an approved project, he shall notify the State that further payments will not be made to the State from available appropriations until he is satisfied that there will no longer be any such failure. Until the Secretary is so satisfied, payment of any financial contribution to the State shall be withheld.

#### **§ 881.9 Reports.**

At such times and in such detail as the Secretary shall require, the State shall furnish to the Secretary a statement with respect to each project showing the work done, the status of the project, expenditures, and amounts